

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 1 – NEW ENGLAND**

In the Matter of:)	
)	
The Artisan Chef Manufacturing, LLC)	Docket No.
)	EPCRA-01-2023-0021
Respondent.)	
)	
Proceeding under Section 325(c) of EPCRA, 42 U.S.C. § 11045(c))	CONSENT AGREEMENT AND FINAL ORDER
)	

CONSENT AGREEMENT

1. The United States Environmental Protection Agency (“EPA”), Region 1 (“Complainant”), alleges that The Artisan Chef Manufacturing, LLC (“Respondent”) violated the Emergency Planning and Community Right-to-Know Act (“EPCRA”), 42 U.S.C. §§ 11001 – 11050, and federal regulations promulgated thereunder.

2. Complainant and Respondent (together, the “Parties”) agree that settlement of this matter is in the public interest and that entry of this Consent Agreement and Final Order (“CAFO”) without further litigation is the most appropriate means of resolving this matter. Pursuant to 40 C.F.R. § 22.13(b) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation/Termination or Suspension of Permits (“Consolidated Rules”), as codified at 40 C.F.R. Part 22, Complainant and Respondent agree to simultaneously commence and conclude this administrative penalty action by the issuance of this CAFO.

3. Therefore, before any hearing, and without adjudication of any issues of law or fact herein, the Parties agree to comply with the terms of this CAFO as set out below.

I. STATUTORY AND REGULATORY AUTHORITY

4. Under Section 312(a) of EPCRA, owners and operators of facilities that are required to prepare or have available a material safety data sheet (“MSDS”) for a hazardous chemical under the Occupational Safety and Health Act of 1970 and regulations promulgated thereunder (“hazardous chemicals”) must prepare and submit an emergency and hazardous chemical inventory form (“Tier I” or “Tier II” form) to the local emergency planning committee (“LEPC”), the state emergency response commission (“SERC”), and the local fire department. Tier I or Tier II forms must be submitted annually on or before March 1 and are required to contain information with respect to the preceding calendar year.

5. The term “MSDS” has been replaced by the term “safety data sheet” (“SDS”) in OSHA’s hazard communication regulations at 29 C.F.R. § 1910.1200.

6. Section 312(b) of EPCRA, 42 U.S.C. § 11022(b), authorizes EPA to establish minimum threshold levels of hazardous chemicals for the purposes of Section 312(a) of EPCRA, 42 U.S.C. § 11022(a).

7. Under Sections 312 and 328 of EPCRA, 42 U.S.C. §§ 11022 and 11048, EPA has promulgated Hazardous Chemical Reporting: Community Right-to-Know regulations at 40 C.F.R. Part 370. These regulations establish minimum threshold levels for hazardous chemical reporting under EPCRA Section 312 at 40 C.F.R. § 370.10(a)(1). For extremely hazardous substances, the minimum threshold level is 500 lbs. or the threshold planning quantity set forth in Appendices A and B or 40 C.F.R. Part 355, whichever is lower.

8. Under 40 C.F.R. §§ 370.20, 370.40, and 370.44, the owner or operator of a facility that has present a quantity of a hazardous chemical exceeding the minimum threshold level, as set forth in 40 C.F.R. § 370.10, must prepare and submit a Tier I or Tier II form to the

LEPC, SERC, and local fire department with jurisdiction over the facility. Forty C.F.R. § 370.45(a) requires that Tier I or Tier II forms be submitted annually on or before March 1 and contain information relating to the preceding calendar year. Forty C.F.R. § 370.40(b) allows the LEPC, SERC or local fire department to request that a facility submit the more comprehensive Tier II form in lieu of the Tier I form. The Commonwealth of Massachusetts requires the more comprehensive Tier II form.

9. Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended through 2016 (“FCPIAA”), and the FCPIAA’s implementing regulations as promulgated and updated by EPA at 40 C.F.R. Part 19 (most recently at 87 Fed. Reg. 1676, 1679 (Jan. 12, 2022)), together provide for the assessment of civil administrative penalties, in amounts of up to \$67,544 for each violation of Section 312 of EPCRA that occurs after November 2, 2015. Pursuant to Section 325(c)(3) of EPCRA, 42 U.S.C. § 11045(c)(3), each day that an EPCRA Section 312 violation continues constitutes a separate violation.

II. GENERAL ALLEGATIONS

10. At all times relevant to the violations alleged herein, Respondent operated a specialty food manufacturing and distribution facility located at 117 Water Street, Lawrence, Massachusetts (the “Facility”).

11. The Facility is in a densely populated area. The Facility is located less than 100 feet from a Boys & Girls Club and within half a mile radius of residential homes, schools, a church, and a public park.

12. As a Massachusetts corporation, Respondent is a “person” within the meaning of Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), and 40 C.F.R. § 370.66.

13. Respondent's Facility is a "facility" within the meaning of Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 370.66.

14. Respondent is the "owner or operator" of the Facility within the meaning of Section 312 of EPCRA, 42 U.S.C. § 11022.

15. Respondent's Facility contains refrigerated spaces that use anhydrous ammonia as a refrigerant. During calendar years 2020 and 2021, the average daily amount of anhydrous ammonia present at the Facility was over 10,000 pounds, and the maximum daily amount was over 14,000 pounds.

16. During calendar years 2020 and 2021, Respondent was required under OSHA and regulations promulgated under OSHA to prepare or have available at the Facility a SDS for anhydrous ammonia.

17. Ammonia is a hazardous chemical that is listed as an "extremely hazardous substance" in 40 C.F.R. Part 355, Appendices A and B, with a threshold planning quantity of 500 lbs. Pursuant to 40 C.F.R. § 370.10(a)(1), ammonia therefore has a minimum threshold of 500 pounds for reporting under Section 312 of EPCRA and 40 C.F.R. Part 370.

18. Accordingly, at the time of the violations alleged in this Complaint, Respondent owned or operated a facility at which a hazardous chemical was present in quantities that made Respondent subject to the reporting requirements of Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. Part 370.

19. On December 1, 2021, Complainant issued a Notice of Noncompliance ("NON") to Respondent regarding EPCRA Tier II Reporting for calendar year 2020. After receiving no reply from Respondent, Complainant resent the NON in February, March, and July 2022.

III. ALLEGED EPCRA SECTION 312 VIOLATIONS

Count 1 – Failure To Submit Tier II Chemical Inventory Form For Calendar Year 2020

20. During calendar year 2020, Respondent stored anhydrous ammonia, a hazardous chemical and an extremely hazardous substance as defined under 40 C.F.R. § 370.66, at the Facility in an amount greater than the threshold level of 500 pounds as established under 40 C.F.R. § 370.10(a)(1).

21. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, Respondent was required to prepare and submit an emergency and hazardous chemical inventory (Tier II) form for anhydrous ammonia at the Facility to the SERC, LEPC, and the local fire department for calendar year 2020, on or before March 1, 2021.

22. Respondent failed to submit a Tier II chemical inventory form for anhydrous ammonia at the Facility for calendar year 2020 on or before March 1, 2021, to the appropriate SERC, LEPC, and the local fire department.

23. After being contacted by Complainant, Respondent submitted a Tier II chemical inventory form for anhydrous ammonia at the Facility on December 21, 2022.

24. Accordingly, by failing to timely submit its required Tier II chemical inventory form for anhydrous ammonia for calendar year 2020, Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45.

Count 2 – Failure To Submit Tier II Chemical Inventory Form For Calendar Year 2021

25. During calendar year 2021, Respondent stored anhydrous ammonia, a hazardous chemical and an extremely hazardous substance as defined under 40 C.F.R. § 370.66, at the

Facility in an amount greater than the threshold level of 500 pounds as established under 40 C.F.R. § 370.10(a)(1).

26. Under 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45, Respondent was required to prepare and submit an emergency and hazardous chemical inventory (Tier II) form for anhydrous ammonia at the Facility to the SERC, LEPC, and the local fire department for calendar year 2021, on or before March 1, 2022.

27. Respondent failed to submit a Tier II chemical inventory form for anhydrous ammonia at the Facility for calendar year 2021 to the appropriate SERC, LEPC, and the local fire department on or before March 1, 2022.

28. After being contacted by Complainant, Respondent submitted a Tier II chemical inventory form for anhydrous ammonia at the Facility on December 22, 2022.

29. Accordingly, by failing to timely submit its required Tier II chemical inventory form for anhydrous ammonia for calendar year 2021, Respondent violated Section 312 of EPCRA, 42 U.S.C. § 11022, and 40 C.F.R. §§ 370.20, 370.40, 370.44, and 370.45.

IV. TERMS OF SETTLEMENT

30. For the purpose of this proceeding, as required by 40 C.F.R. § 22.18(b)(2), Respondent:

- a. Admits that EPA has jurisdiction over the subject matter alleged in this CAFO;
- b. Neither admits nor denies the specific factual allegations contained in this CAFO;
- c. Consents to the assessment of a civil penalty as stated below;

- d. Consents to the issuance of any specified compliance or corrective action order;
 - e. Consents to the conditions specified in this CAFO;
 - f. Consents to any stated permit action;
 - g. Waives any right to contest the alleged violations of law set forth in Section III of this CAFO; and
 - h. Waive its right to appeal the Final Order accompanying this Consent Agreement.
31. For the purpose of this proceeding, Respondents also:
- a. Agrees that this CAFO states a claim upon which relief can be granted against Respondent;
 - b. Acknowledges that this CAFO constitutes an enforcement action for purposes of considering Respondents' compliance history in any subsequent enforcement actions;
 - c. Waives any and all remedies, claims for relief, and otherwise available rights to judicial or administrative review that Respondent may have with respect to any issue of fact or law set forth in this CAFO;
 - d. Consents to personal jurisdiction in any action to enforce this CAFO in the United States District Court for the District of Massachusetts; and
 - e. Waive any rights Respondent may possess at law or in equity to challenge the authority of the EPA to bring a civil action in a United States District Court to compel compliance with the CAFO and to seek an additional

penalty for such noncompliance and agree that federal law shall govern in any such civil action.

32. Respondent certifies that it has corrected the violations alleged in this CAFO and is currently operating the Facility in compliance with the requirements of EPCRA Section 312.

33. Pursuant to Section 325(c) of EPCRA, 42 U.S.C. § 11045(c), and taking into account the particular facts and circumstances of this case with reference to the relevant statutory penalty criteria, applicable penalty policies, and penalty calculation factors therein, Complainant has determined that it is fair and proper that Respondent pay a total civil penalty of \$63,837 to resolve the violations alleged in Section III of this CAFO.

34. Respondent agrees to:

- a) Pay the civil penalty of \$63,837 (“EPA Penalty”), in two installment payments, within six (6) months of the effective date of this CAFO. The first installment in the amount of \$31,918.50 shall be made within 30 calendar days of the effective date of the CAFO. The second installment in the amount of \$33,918.50 (\$31,918.50 in principal and \$1,117.15 in interest at a 7% rate) shall be made within six (6) months of the effective date of this CAFO. The installment payment plan was based upon Respondent’s inability to pay the entire penalty amount within 30 days without experiencing undue financial hardship, and was determined by EPA to be in the best interest of the United States;
- b) Pay the EPA Penalty using any appropriate method provided on the website <http://www.epa.gov/financial/makepayment>, and identifying every payment with “*In the Matter of Artisan Chef Manufacturing, LLC*, Docket No. EPCRA-01-2023-0021”; and
- c) Within 24 hours of payment of the EPA Penalty, send proof of payment by email to the addresses below. “Proof of payment” means, as applicable, a copy of the check,

confirmation of credit card or debit card payment, confirmation of wire or automated clearinghouse transfer, and any other information required to demonstrate that payment has been made according to the EPA requirements, in the amount due, and identified with “*In the Matter of Artisan Chef Manufacturing, LLC*, Docket No.

EPCRA- 01-2023-0021.” The addresses are as follows:

DeMarcus Freeman
Enforcement Counsel
U.S. Environmental Protection Agency, Region 1
Freeman.Demarcus@epa.gov

Wanda I. Santiago
Regional Hearing Clerk
U.S. Environmental Protection Agency, Region 1
Santiago.Wanda@epa.gov
and
R1_Hearing_Clerk_Filings@epa.gov

35. Pursuant to 31 U.S.C. § 3717, EPA is entitled to assess interest and penalties on debts owed to the United States and a charge to cover the cost of processing and handling a delinquent claim. If Respondent does not fully pay each installment of the civil penalty required by Paragraph 34 when due, Respondent’s entire unpaid civil penalty shall be immediately due and payable, plus accrued interest from the original due date to the date of payment, with the interest calculated at the rate established in accordance with 31 C.F.R. § 901.9(b)(2). A charge will be assessed to cover the costs of debt collection, including processing and handling costs and attorneys’ fees. In addition, a penalty charge of six percent per year will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due, with the charge accruing from the date of delinquency in accordance with 31 C.F.R. § 901.9(d). In any such collection action, the validity, amount, and appropriateness of the penalty shall not be subject to review.

36. The civil penalty provided under this CAFO, and any interest, nonpayment penalties, and charges described in this CAFO, shall represent penalties assessed by EPA within the meaning of 26 U.S.C. § 162(f) and are not tax deductible for purposes of federal, state, or local law. Accordingly, Respondent agrees to treat all payments made pursuant to this CAFO as penalties within the meaning of 26 C.F.R. § 1.162-21, and further agrees not to use these payments in any way as, or in furtherance of, a tax deduction under federal, state, or local law.

37. This CAFO constitutes a settlement by EPA of all claims for civil penalties pursuant to Section 325(c) of EPCRA for the violations specifically alleged in Section III above. Compliance with this CAFO shall not be a defense to any other actions subsequently commenced pursuant to federal laws and regulations administered by EPA for matters not addressed in this CAFO, and it is the responsibility of Respondents to comply with all applicable provisions of federal, state, or local law. This CAFO in no way relieves Respondent or its employees of any criminal liability. Nothing in this CAFO shall be construed to limit the authority of EPA to undertake any action against Respondent in response to conditions that may present an imminent and substantial endangerment to the public or the environment.

38. Nothing in this CAFO shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions if Respondent is in violation of this CAFO or continues to be in violation of the statutes and regulations upon which the allegations in this CAFO are based, or if Respondent violates any other applicable provision of federal, state, or local law.

39. Each of the undersigned representatives of the Parties certifies that he or she is fully authorized by the party responsible to enter into the terms and conditions of this CAFO and to execute and legally bind that Party to it.

40. Complainant and Respondent give their respective consent to accept digital signatures on this CAFO. Respondent further consents to accept electronic service of the full executed CAFO, by electronic mail, to counsel for Respondent at the following addresses: mconnolly@nutter.com and msnell@nutter.com. Respondent understands that these e-mail addresses may be made public when the CAFO and Certificate of Service are filed and uploaded to a searchable database. Complainant has provided Respondent with a copy of the EPA Region 1 Regional Judicial Officer's Authorization of EPA Region 1 Part 22 Electronic Filing System for Electronic Filing and Service of Documents Standing Order, dated June 19, 2020. Electronic signatures shall comply with and be maintained in accordance with that Order.

41. Except as qualified by Paragraph 35, each Party shall bear its own costs and fees (including attorneys' fees) in this proceeding and specifically waives any right to recover such costs and fees pursuant to the Equal Access to Justice Act, 5 U.S.C. § 504, or other applicable laws.

42. The terms, conditions, and compliance requirements of this CAFO may not be modified or amended except upon the written agreement of the Parties and approval of the Regional Judicial Officer.

43. In accordance with 40 C.F.R. § 22.31(b), the effective date of this CAFO is the date on which this CAFO is filed, either in person or electronically via email, with the Regional Hearing Clerk.

FOR RESPONDENT:



Joseph Faro, President
The Artisan Chef Manufacturing, LLC

6/20/23

Date

In the Matter of Artisan Chef Manufacturing, LLC, Docket No. EPCRA-01-2023-0021
Consent Agreement and Final Order

FOR COMPLAINANT:

James Chow, Acting Director
Enforcement and Compliance Assurance Division
U.S. Environmental Protection Agency, Region I

Date

FINAL ORDER

Pursuant to 40 C.F.R. §§ 22.18(b) and (c) of EPA's Consolidated Rules, the foregoing Consent Agreement resolving this matter is incorporated by reference into this Final Order and is hereby ratified. Respondent The Artisan Chef Manufacturing, LLC, is ordered to pay the civil penalty amount specified in the Consent Agreement in the manner indicated therein. The terms of the CAFO shall become effective on the date it is filed, either in person or electronically via email, with the Regional Hearing Clerk.

LeAnn Jensen
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 1

Date